

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SHAWN L. JACOBS,

Petitioner,

v.

CV 04-0551 MV/WPL

MO BRAVO and THE
ATTORNEY GENERAL
OF NEW MEXICO,

Respondents.

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

Shawn L. Jacobs filed a motion to reopen the time to file an appeal under Federal Rule of Appellate Procedure 4(a)(6). (Doc. 32.) That rule allows this Court to reopen the time to file an appeal “for a period of 14 days after the date when its order to reopen is entered” if certain requirements are met. On January 31, 2007, the presiding judge entered an order adopting my recommendation that Jacobs’s motion be granted. (Docs. 37, 39.) Jacobs has now filed a second motion to reopen the time to file an appeal. (Doc. 40.) He states under penalty of perjury that he did not receive a copy of the presiding judge’s order until February 21, 2007. (*Id.*) Therefore, he was unable to file a notice of appeal within the 14-day period.

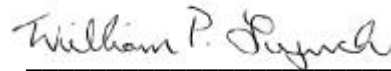
Jacobs’s second motion is unnecessary because he already filed a notice of appeal on June 1, 2006. (Doc. 30.) This otherwise untimely notice of appeal was validated by this Court’s granting of his first motion to reopen the time to file an appeal. *See Hinton v. City of Elwood*, 997 F.2d 774, 777-79 (10th Cir. 1993) (involving a motion for extension of time to appeal under Rule 4(a)(5)); *see also DiCesare v. Baldrige*, No. 97-5191, 1998 WL 476871, at **1 (10th Cir. Aug. 11, 1998)

(applying *Hinton* to Rule 4(a)(6) motion). “[T]o require the filing of a new notice of appeal . . . would amount to little more than empty paper shuffling.” *Hinton*, 997 F.2d at 778 (internal quotation marks omitted). In other words, Jacobs’s appeal may go forward based on the June 1, 2006 notice of appeal and the January 31, 2007 order reopening the time to file an appeal.

RECOMMENDATION

For the reasons stated above, I recommend that the “Second Motion to Reopen Time Requirements” (Doc. 40) be denied as moot.

THE PARTIES ARE NOTIFIED THAT WITHIN 10 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636 (b)(1). **A party must file any objections with the Clerk of the District Court within the ten-day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.**



WILLIAM P. LYNCH
UNITED STATES MAGISTRATE JUDGE